

MT LEGISLATIVE HISTORY

Chapter 509 19 82

Bill (H) 283 S _____

Original bill & hist. ✓C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) January 30 ✓C

Hearing Date(s) MAR 16 ✓C

February 5 ✓C

MAR 21 ✓C

_____ C

_____ C

_____ C

_____ C

Date Out February 5 ✓C

MAR 21 ✓C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY-MARY HUBER

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0277	2/23	3/17		CONCUR AS AMENDED		3/17
CONNELLY, MARY ELLEN			IMPOSING A DRIVER'S LICENSE REINSTATEMENT FEE TO FUND COUNTY DUI PROGRAMS			
HB0283	2/12	3/16		CONCUR AS AMENDED		3/21
DARKO, PAULA			VISITATION CHANGE CUSTODIAN MOVES; OBSTRUCT VISITATION BASIS CUSTODY CHANGE			
HB0284	3/02	3/16		CONCUR AS AMENDED		3/21
DARKO, PAULA			VISITATION INTERFERENCE AS A CRIME			
HB0286	3/02	3/24		CONCUR AS AMENDED		3/27
SPAETH, GARY			PERSONAL INJURY AND PROPERTY DAMAGE LIABILITY OF IRRIGATION DISTRICTS			
HB0301	2/16	3/06		CONCUR		3/6
RAPP-SVRCEK, PAUL			NEGLIGENT ENDANGERMENT AND NEGLIGENT VEHICULAR ASSAULT CRIMINAL LAWS			
HB0309	2/23	3/23		CONCUR AS AMENDED		3/26
QUILICI, JOE			GENERALLY REVISING THE CRIME VICTIMS COMPENSATION ACT			
HB0326	2/10	3/05		CONCUR AS AMENDED		3/5
ADDY, KELLY			CREDIT FOR TIME SERVED ON SENTENCE WHEN PROBATION IS REVOKED			
HB0335	2/17	3/03		CONCUR AS AMENDED	Referred back 3/3	3/3 3/4
PISTORIA, PAUL			ALLOW PRIVATE PARKING SERVICE TO ENTER AGREEMENT WITH LOCAL GOVERNMENT			
HB0344	3/02	3/18		CONCUR AS AMENDED		3/19
ASAY, TOM			REVISE TIME LIMITS FOR MEDICAL MALPRACTICE ACTIONS			
HB0353	2/10	3/23		CONCUR		3/23
GOULD, BUDD			INCLUDING DENTISTS IN DOCTOR-PATIENT PRIVILEGE			
HB0367	2/16	3/23		CONCUR		3/23
MILLER, RON			FURNISHING HUMAN TISSUE A SERVICE AND NOT A SALE			

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRE IN AS AMENDED DATE
240	1/27/87	1/27/87	2/19/87			2/19/87					
241	1/16/87	1/28/87	2/12/87			2/12/87					
256		2/12/87	2/14/87			2/14/87					
262	1/17/87	2/5/87	2/12/87	2/12/87							
267	1/17/87	1/29/87	1/29/87	1/29/87							
268	1/17/87	2/3/87	2/3/87	tabled							
283	1/19/87	1/30/87				2/5/87					
284	1/19/87	1/30/87	2/19/87			2/19/87					
286	1/19/87	2/6/87				2/23/87					
291	1/19/87	1/27/87	Referred to Highways Committee.								
301		2/5/87	failed to meet deadline								
305	1/20/87	2/5/87	2/6/87	2/6/87							
309	1/20/87	1/29/87	2/3/87			2/3/87					
316	1/20/87	1/28/87				2/19/87					

a separate sheet for Senate Bills, House Bills, and Resolutions.

HOUSE BILL NO. 283

INTRODUCED BY DARKO, J. BROWN

BY REQUEST OF THE CHILD SUPPORT ADVISORY COUNCIL

IN THE HOUSE

JANUARY 19, 1987

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 5, 1987

COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 6, 1987

PRINTING REPORT.

FEBRUARY 7, 1987

SECOND READING, DO PASS AS AMENDED.

FEBRUARY 9, 1987

ENGROSSING REPORT.

FEBRUARY 11, 1987

THIRD READING, PASSED.
AYES, 95; NOES, 1.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 12, 1987

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 23, 1987

COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 28, 1987

SECOND READING, CONCURRED IN.

MARCH 30, 1987

THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 7, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 8, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 213
2 INTRODUCED BY Blaker J. Brown
3 BY REQUEST OF THE CHILD SUPPORT ADVISORY COUNCIL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE A WRITTEN
6 AGREEMENT OR COURT ORDER FOR A CUSTODIAL PARENT TO MOVE A
7 CHILD'S RESIDENCE OUTSIDE THE STATE; TO MAKE A CUSTODIAL
8 PARENT'S ATTEMPTS TO PREVENT CONTACT OR VISITATION BETWEEN
9 THE CHILD AND THE NONCUSTODIAL PARENT A BASIS FOR
10 MODIFICATION OF THE CUSTODY DECREE; AND AMENDING SECTIONS
11 40-4-217 AND 40-4-219, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 40-4-217, MCA, is amended to read:
15 "40-4-217. Visitation. (1) A parent not granted
16 custody of the child is entitled to reasonable visitation
17 rights unless the court finds, after a hearing, that
18 visitation would endanger seriously the child's physical,
19 mental, moral, or emotional health.

20 (2) In a proceeding for dissolution of marriage or
21 legal separation, the court may, upon the petition of a
22 grandparent, grant reasonable visitation rights to the
23 grandparent of the child if the court finds, after a
24 hearing, that the visitation would be in the best interest
25 of the child.

1 (3) The court may modify an order granting or denying
2 visitation rights whenever modification would serve the best
3 interest of the child; but the court shall not restrict a
4 parent's visitation rights unless it finds that the
5 visitation would endanger seriously the child's physical,
6 mental, moral, or emotional health.

7 (4) So long as a noncustodial parent who has been
8 granted visitation rights by the court or by a custody
9 agreement remains a resident of this state, a custodial
10 parent may not change the child's residence to another state
11 before the noncustodial parent has given written consent or
12 has been given notice and an opportunity for hearing. The
13 purpose of the hearing is to allow the noncustodial parent
14 to seek a modification of his visitation schedule. The court
15 may modify the prior decree to provide a new visitation
16 schedule and to apportion transportation costs between the
17 parents."

18 Section 2. Section 40-4-219, MCA, is amended to read:
19 "40-4-219. Modification. (1) The court may in its
20 discretion modify a prior custody decree if it finds, upon
21 the basis of facts that have arisen since the prior decree
22 or that were unknown to the court at the time of entry of
23 the prior decree, that a change has occurred in the
24 circumstances of the child or his custodian and that the
25 modification is necessary to serve the best interest of the

1 child and if it further finds that:

2 (a) the custodian agrees to the modification;

3 (b) the child has been integrated into the family of
4 the petitioner with consent of the custodian;

5 (c) the child's present environment endangers
6 seriously his physical, mental, moral, or emotional health
7 and the harm likely to be caused by a change of environment
8 is outweighed by its advantages to him; or

9 (d) the child is 14 years of age or older and desires
10 the modification; or

11 (e) the custodian willfully and consistently:

12 (i) refuses to allow the child to have any contact
13 with the noncustodial parent;

14 (ii) attempts to alienate the child from the
15 noncustodial parent; or

16 (iii) attempts to frustrate or deny the noncustodial
17 parent's exercise of visitation rights.

18 (2) The court shall presume the custodian is not
19 acting in the child's best interest if the custodian does
20 any of the acts specified in subsection (1)(e).

21 +2+ (3) Attorney fees and costs shall be assessed
22 against a party seeking modification if the court finds that
23 the modification action is vexatious and constitutes
24 harassment.

25 +3+ (4) A custody decree may be modified upon the death

1 of the custodial parent pursuant to 40-4-221."

-End-

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 16, 1987

The forty-third meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 16, 1987, by the Chairman, Joe Mazurek, in Room 402 of the state Capitol.

ROLL CALL: All members were present with the exception of Senator Pinsoneault who was excused.

CONSIDERATION OF HOUSE BILLS 283 and 284: Representative Paula Darko, House District 2, introduced House Bills 283 and 284, which are attached as Exhibit 1 and Exhibit 2.

PROPOSERS: John McGray, Montana Child Support Council, explained how the council runs in the state. He said the only remedy for visitation problems in Montana is the parties have to appear in court and prove something happened. He said many fathers who have visitation problems don't know about this one remedy and become frustrated and decide not to pay child support to get even. He felt HB 283 and HB 284 will help protect the father's rights. He said HB 283 protects the child's right to know both parents. He gave a California law example that showed how tough states are getting with family law. He said the moving of a child upsets a child's schedule with the visiting parent. He said a move to another state might cause the loss of visitation rights because of different state laws. He stated HB 283 will help the visiting parent keep his rights by having a hearing. He explained HB 284 states interfering with the child can be a crime. He proposed amendments for HB 284 because several people were concerned about the visiting parent coming for a visit and being drunk. (Exhibit 3)

John Hollow, attorney in Helena in custody law, gave the committee a Parent/Child Sharing Guideline. (Exhibit 4) He said HB 283 fails to address a situation of a young child that is bonded to one parent. He said children become enraged because the bonding has been broken. He

said the moving of a child will cause the bonding to break. He suggested on page 2, line 15, that the court balance the child's and parent's interest in a moving situation. He wanted the court to have the right to say no to a move if it would hurt the child. Mr. Hallow supported the John McGray amendment.

Lynn Robson, Women's Lobbyists Fund, wanted to see the non-custodial parent have to go through the hearing procedure if the non-custodial parent was the one moving. She also wanted to see a quicker access to the court. She said low income people don't have the income to get an attorney and get into court quickly. She said the problem is many who do get out of state jobs have to be on the job as quick as possible, but if the court procedure takes time, it causes problems with separation from children.

Joan Uda, Child Support Advisory Council, supported the McGray amendment, but not the Hollow suggestion.

Marcia Dias, representing herself, supported HB 283 and HB 284. (Exhibit 5)

Sue Fiefield, AFC, said many mothers are upset about visitation rights. She said many mothers feel fathers shouldn't have visitation rights because of the father's activities.

OPPONENTS: Klaus Sitte, Legal Services Association, Missoula, said these bills will not correct the problem of late child support payments. He said in HB 283, it fails to have the judge have a list of reasons for not letting the non-custodial parent visit, such as visiting while intoxicated. He said he agreed with the McGray amendment because it does put some guideline in for allowing visitation or not. He explained that after a divorce the trend is that the father's situation improves and the mother's doesn't. He asked who will have the mother come before the court when she wants to move if she is the worse off of the two parents. He said HB 284 shouldn't have visitation problems under the criminal code because county attorneys like to keep family separations out of the criminal court. He felt it will over-burden the court systems by putting this in the criminal code.

Nina Vagnelis, attorney, opposed HB 283 and HB 284. She said the visitation decree modification in court is a major problem. She told several stories about women moving with

children and being stopped because of a court hearing subjected by the non-custodial parent. She thought there should be a time period in HB 283, in the notice, such as 30 days before a move, to the non-custodial parent. She said this gives the non-custodial parent time to go to court and it gives time to the custodial parent also to prepare for court. She said the court should have the right to modify the visitation decree if a parent had moved or gave notice of moving. She disagreed with Mr. Hallow's idea that a custodial parent should have to choose between the child or the job. She said the custodial parent should not have to hire a lawyer just to move.

DISCUSSION ON HOUSE BILLS 283 and 284: Senator Blaylock said the power of visitation is used against the fathers many times. Nina Vagnelis said a statute now on the books says visitation and child support can't be linked, but they are linked in a lot of parent's minds. She said many mothers wouldn't leave the state if it wasn't for economic need.

Senator Mazurek asked where the bills originated. Mr. McGray said other states have these statutes. Senator Mazurek asked why, in HB 284 on page 1, lines 22-25, the House deleted increasing the penalties for subsequent convictions. Rep. Darko replied that the House Judiciary felt the harsher penalties for subsequent convictions would antagonize more hard feelings and make the situation worse in a troubled family situation.

Senator Blaylock asked John McGray what he thought of John Hollow's suggestion on the McGray amendment, which just put it all under "just cause". Mr. McGray thought it too broad for family law.

Senator Beck asked how many people move out of the state just to upset the non-custodial parent. He felt that didn't happen very often. Rep. Darko said many people leave for economic reasons, but they have to let the other parent know they are leaving.

Rep. Darko closed by saying HB 283 and HB 284 make it fair for both sides, not just one. She explained she invited Klaus Sitte to come and testify against the bills because it made the hearing fair. She said she wouldn't oppose an amendment for court access to low income people or the 30 day notice mentioned.

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 16

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>		X	
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

COMMITTEE ON

Judiciary

DATE

March 16th

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Debra Jones	Women's Lobbyist Fund	566 679	X	
Gill Kennedy	Friendship Center of Helena	566 679	X	
John H. Hellyer	Attorney	284	X	
Thore F. Tahafiro	Friendship Center of Helena	566 679	X	
Roseanne	PS 85	566 679	X	
Jean Hda	Child Support Advisory Council	283 284		
James Kelson	Women's Lobbyist Fund	283 284		
Tom Schneider	Individual	566	X	
Caryl Wicken Borchers	Domestic Violence Mt. Coalition Against	566	X	
Caryl Wicken Borchers	Mt. Coalition A.D. Violence	679	X	
Janet K. K. K.		566	X	
Barbara L. L.		679	X	
Barbara L. L.		566 679	X	
Gill Kennedy	Friendship Center of Helena	283 284		X
Thore F. Tahafiro	" " "	283 284		X
Roseanne	Women's Law Caucus	566	X	
Jennifer Cayne	Mt. Falls Mercy Home	566 679	X	
Miss Vaznelis	Attorney	485, 283 283		X

SUMMARY OF HB283 (DARKO)

(Prepared by Senate Judiciary Committee staff)

HB283 is by request of the Child Support Advisory Council and amends the law relating to child custody. This bill would prohibit a parent who has been granted custody of his or her child after divorce or separation from moving with the child to another state as long as the noncustodial parent lives in Montana, unless the noncustodial parent gives written consent or the change is allowed by an order of the court. The purpose of a court hearing is to allow a noncustodial parent an opportunity to get a modification of his visitation schedule. The court may order a new visitation schedule and apportion transportation costs between the parents. The bill also makes a custodial parent's attempts to prevent contact or visitation between the child and a noncustodial parent grounds for modification of custody. In addition to the possibility of modification provided in this bill, a companion bill, HB284, also provides criminal penalties for taking a child out of state under these circumstances.

COMMENTS: As pointed out by letter from an attorney in Missoula, the provisions of the bill could place a custodial parent in a real dilemma if he has to choose between breaking the law or protecting a child from an abusive noncustodial parent. This could be especially burdensome on low-income parents who cannot afford legal advice.

C:\LANE\WP\SUMHB283.

H.B. 283

I, Support this bill and its intent.
With the following amendments.

However

(1) The Custodian parent should be allowed to leave the state by notifying the Court and Non-Custodial parent in writing (2-3) weeks in advance to departure, if a hearing cannot be arranged before the date of departure. The custodian parent should sign a statement promising to return for the hearing. [This is necessary so that people do not lose employment opportunities, because they are caught up in Court for 6 months - 1 year. The Courts move slowly.]

(2) Non-Custodial parent should be required to report to the Court and Custodial parent in writing (2-3) weeks in advance to departure, if a hearing cannot be arranged before the date of departure. The Non-Custodial parent should sign a statement promising to return for the hearing. [This is necessary to make

arrangements for continuing child support and visitation]. The non-custodial parent is subject to all fines and penalties as the custodial parent by not adhering to this procedure prior to leaving the state.

Marcia Dias
10 Washington Pl.
Helena, Mont 59601
443-4496.

first proposed amendment. Senator Yellowtail moved the amended amendments. The motion CARRIED.

Senator Brown moved House Bill 73 BE CONCURRED IN AS AMENDED. The motion CARRIED.

ACTION ON HOUSE BILL 283: Valencia Lane distributed the amendments and explained them. (Exhibit 5) Senator Mazurek suggested changing the last amendment on Exhibit 5 so that the language was more clear. The amendments passed with the changes. Senator Halligan moved House Bill 283 BE CONCURRED IN AS AMENDED. The motion CARRIED.

ACTION ON HOUSE BILL 284: Valencia Lane distributed copies of amendment. (Exhibit 6) Senator Beck said the amendment or bill doesn't make it clear if a person has to give notice for a vacation. He said a vacation might be more than two weeks. Senator Mazurek felt this bill should not include the penalty as an aggravated felony.

Mr. Bill Harrington, Child Support Advisory Council, and an attorney, stated the major problem with not receiving child support is visitation rights because the rights have been violated, so the child support stops. Ms. Lane found section 2 in the bill where it clarifies vacation time. She said there is great concern about the father showing up drunk for visits. Senator Halligan felt the bill should include the words "good cause" when it comes to rejecting a visitation.

Senator Pinsoneault thought "good cause" was too broad a term and could open a lot of avenues. Senator Halligan said the county attorney needs broad terms in these cases because it gives him discretion. Valencia Lane suggested using the word "reasonable" over "good". Senator Halligan moved the "reasonable cause" clause on page 2, line 18. Senator Pinsoneault wanted to adopt the amendments given March 16. (Exhibit 7) Senator Halligan echoed a broad area is better to work with in family law. Senator Yellowtail said there should be clearer language on page 2, line 3, with the vacation problem. Senator Halligan moved with his other motion, Valencia Lane's amendment and a change on page 2, line 3, to clear the vacation situation. The motion CARRIED. Senator Halligan moved House Bill 284 BE CONCURRED IN AS AMENDED. The motion CARRIED, with Senator Mazurek voting no.

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 2

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>		X	X
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blavlock</u>		X	X
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

Proposed amendments to HB 283, third reading copy (blue)

1. Title, line 5.
Following: "REQUIRE"
Strike: "A"
2. Title, line 6.
Following: line 5
Strike: "AGREEMENT OR COURT ORDER FOR"
Insert: "NOTICE WHEN"
Following: "PARENT"
Strike: "TO MOVE"
Insert: "MOVES"
3. Title, line 7.
Following: "RESIDENCE"
Strike: "OUTSIDE"
Insert: "FROM"
Following: "MAKE"
Insert: "CHANGE OF A CHILD'S RESIDENCE TO ANOTHER STATE
AND"
4. Title, line 9.
Following: "PARENT"
Strike: "A"
5. Page 2, line 10.
Following: "SHALL"
Strike: "not change"
Insert: ", before changing"
6. Page 2, line 11.
Following: "state"
Insert: ", "
7. Page 2, line 12.
Following: "consent"
Strike: "or"
Insert: ", "
8. Page 2, lines 13 and 14.
Following: "UPON" on line 13
Strike: remainder of line 13 through "AFTER" on line 14
Insert: "give written"
9. Page 2, lines 14 and 15.
Following: "PARENT" on line 14
Strike: the remainder of line 14 through "hearing." on
line 15
Insert: ", as provided in subsection (5).
(5) The written notice required by subsection (4)

must be submitted to the court that issued the custody order not less than 30 days before the proposed change in residence. The court shall immediately serve notice of the proposed change on the noncustodial parent personally or by certified mail."

10. Page 2, line 15.
Following: "of the"
Strike: "hearing"
Insert: "notice"
11. Page 2, lines 17 through 19.
Following: "schedule." on line 17
Strike: remainder of line 17 through line 19
12. Page 3, line 12.
Strike: "or"
13. Page 3, line 19.
Following: "rights"
Insert: "; or
(f) the custodial parent has changed or intends to change the child's residence to another state"
14. Page 3, line 23.
Following: line 22
Insert: "(3) If a custody decree is modified based on subsection (1)(f), the court may modify the prior decree to provide a new visitation schedule and to apportion transportation costs between the parents."
Renumber: subsequent subsections

How HB 283 would read if amendments adopted:

Title: "AN ACT TO REQUIRE WRITTEN NOTICE WHEN A CUSTODIAL PARENT MOVES A CHILD'S RESIDENCE FROM THE STATE; TO MAKE CHANGE OF A CHILD'S RESIDENCE TO ANOTHER STATE AND A CUSTODIAL PARENT'S ATTEMPTS TO PREVENT CONTACT OR VISITATION BETWEEN THE CHILD AND THE NONCUSTODIAL PARENT BASIS FOR MODIFICATION OF THE CUSTODY DECREE,"

SUBSECTION (4) AND (5), lines 7 - 19, page 2:

"(4) So long as a noncustodial parent who has been granted visitation rights *under a custody order* ~~by the court or by a~~ custody agreement remains a resident of this state, a resident custodial parent shall, before changing the child's residence to another state, *and* unless the noncustodial parent has given written consent, give written notice to the noncustodial parent, as provided in subsection (5).

(5) The written notice required by subsection (4) *given and served by the mail (eas)* must be submitted to the court that issued the custody order not less than 30 days before the proposed change in residence. *shall be served by mail* The court must immediately serve notice of the proposed change on the noncustodial parent personally or by certified mail. The purpose of the notice is to allow the noncustodial parent to seek a modification of his visitation schedule."

1 circumstances of the child or his custodian and that the
2 modification is necessary to serve the best interest of the
3 child and if it further finds that:

4 (a) the custodian agrees to the modification;

5 (b) the child has been integrated into the family of
6 the petitioner with consent of the custodian;

7 (c) the child's present environment endangers
8 seriously his physical, mental, moral, or emotional health
9 and the harm likely to be caused by a change of environment
10 is outweighed by its advantages to him; or

11 (d) the child is 14 years of age or older and desires
12 the modification; ~~or~~

13 (e) the custodian willfully and consistently:

14 (i) refuses to allow the child to have any contact
15 with the noncustodial parent; OR

16 iii) attempts to alienate the child from the
17 noncustodial parent; or

18 iiii) attempts to frustrate or deny the
19 noncustodial parent's exercise of visitation rights;

20 (2) The court shall presume the custodian is not
21 acting in the child's best interest if the custodian does
22 any of the acts specified in subsection (1)(e).

23 (2)(2) Attorney fees and costs shall be assessed
24 against a party seeking modification if the court finds that
25 the modification action is vexatious and constitutes

1 harassment.

2 (3)(4) A custody decree may be modified upon the death
3 of the custodial parent pursuant to 40-4-221."

-End-

or
(f) the custodial parent has changed or intends
to change the child's residence to another state

(3) If a custody decree is modified based on
subsection (1)(f), the court may modify the prior
decree to provide a new visitation schedule and to
apportion transportation costs between the parents.

STANDING COMMITTEE REPORT

March 23

1967

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 283

Third reading copy (blue)
color

Visitation change custodian moves; obstruct visitation basis custody change.
Barko (Hazarak)

Respectfully report as follows: That HOUSE BILL No. 283

1. Title, line 5.
Following: "REQUIRE"
Strike: "A"

2. Title, line 6.
Following: line 5
Strike: "AGREEMENT OR COURT ORDER FOR"
Insert: "NOTICE IN CERTAIN CASES WHEN"
Following: "PARENT"
Strike: "TO MOVE"
Insert: "MOVES"

3. Title, line 7.
Following: "RESIDENCE"
Strike: "OUTSIDE"
Insert: "FROM"
Following: "MAKE"
Insert: "CHANGE OF A CHILD'S RESIDENCE TO ANOTHER STATE AND"

4. Title, line 9.
Following: "PARENT"
Strike: "A"

XXXXXXXX
DO PASS

XXXXXXXX
DO NOT PASS

CONTINUED

Senator Hazarak

Chairman.

SENATE JUDICIARY

HD 283

March 23

1927

Page 2

5. Page 2, line 7.
Strike: "been"

6. Page 2, line 8.
Following: line 7
Strike: "granted"
Following: "rights"
Strike: "by the court"
Insert: "under a decree"
Following: "or"
Strike: "by"

7. Page 2, line 10.
Following: "SHALL"
Strike: "not change"
Insert: ", before changing"

8. Page 2, line 11.
Following: "state"
Insert: "and"

9. Page 2, line 12.
Following: "consent"
Strike: "or"
Insert: ", "

10. Page 2, lines 13 and 14.
Following: "SPSN" on line 13
Strike: remainder of line 13 through "AFTER" on line 14
Insert: "give written"

11. Page 2, lines 14 and 15.
Following: "PARENT" on line 14
Strike: remainder of line 14 through "hearing." on line 15
Insert: ", as provided in subsection (5).

(5) The written notice required by subsection (4) must be served personally or given by certified mail not less than 30 days before the proposed change in residence. Proof of service must be filed with the court that issued the custody order."

12. Page 2, line 15.
Following: "of the"
Strike: "hearing"
Insert: "notice"

CONTINUED

13. Page 3, lines 17 through 18.

Following: "schedule." on line 17

Strike: remainder of line 17 through line 18

14. Page 3, line 12.

Strike: "or"

15. Page 3, line 19.

Following: "rights"

Insert: "; or

(2) the custodial parent has changed or intends to change the child's residence to another state"

16. Page 3, line 23.

Following: line 22

Insert: "(3) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation schedule and to apportion transportation costs between the parents."

Re-number: subsequent subsections

7080j/C:JEANNE\WP:jj

Amendments, HB 283

AND AS AMENDED
BE CONCURRED IN

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

January 30, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on January 30, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Hannah and Brown who were absent.

HOUSE BILL NO. 283 AND 284: Rep. Darko, District No. 2, sponsor, stated that HB 283 deals with requiring a written agreement or court order for a custodial parent to move a child's residence outside the state and to make a custodial parent's attempts to prevent contact or visitation between the child and the noncustodial parent a basis for modification of the custody decree. She explained that HB 284 deals with visitation rights also and requested that both bills be discussed together. This bill is defining visitation interference and aggravated visitation interference as criminal offenses and provides penalties for and defenses to visitation interference and aggravated visitation interference. HB 283 simply requires a hearing for removal of children from the state after the divorce and states that parents must come before the court and the decree must be modified.

PROPOSERS: JOHN MCBRIGGS, representing the Montana Child Support Division Council, explained that the council was established in 1984 by the Governor. The state of Montana has its own self interest in resolving some of the problems relating to the child support issues. The intent of the council is to study all the inner relationships with custody, visitation and any other problems that may affect payment or nonpayment of child support and also to develop and recommend guidelines. Guidelines have already been approved by the Montana Supreme Court. Findings and recommendations from the Council have been compiled in these two bills. He urged support for both bills.

JIM LEITER, Townsend, stated that often custodial parents use contempt as a tool and this bill is fair to everyone involved. He urged support for both bills.

WAYNE G. PETERSON, Missoula, stated that his two sons deserve a much better life than the life they now live. Unfortunately, American society assumes that noncustodial parents, especially fathers, do not love their children. He

supports these bills for the sake of the children. He submitted written testimony. (Exhibit A).

R. HOLTER, Judge, Child Support Advisory Council, urged passage of both bills because they will take some of the problems away.

DOC DUTTON, Polson, pointed out that he basically wants these two bills passed for the sake of the children. He stated that the children should have rights too.

KAYE HOLMESLAND, Ft. Shaw, stated that she has experienced aggravated visitation twice in the last few years and is heartened to see this sort of legislation going forth. She felt there is a need to link visitation and child support, however, as a duty-right. Child support being the duty and visitation the right. She submitted written testimony. (Exhibit B).

BOB SILVERNALE, United Fathers of America, pointed out that these bills are a step in the right direction and urged for their passage.

DON FLEMING, currently an active member of a local divorce support group, supported this legislation.

RICK JENENSEN, went on record in support of the two bills.

GLENN KANVICK, Billings, a noncustodial parent and is on the Child Support Advisory Council, stated that part of the reason that the council got started was to work together on child support and visitation problems on a national level. The bills being discussed will not stop the problems, but they will help.

JERRY O'NEILL, Kalispell, urged support of the bills.

BILL LIMEN, acknowledged that children need both parents and these bills will help in this area and they will make a difference.

OPPONENTS: MARCIA DIAS, stated these bills need modification. She acknowledged that she has denied visitation rights because of domestic violence. She said she generally supports the two bills, but, there needs to be a provision covering why people can deny visitation. She further stated that if there is such a heavy penalty for denying visitation, there should also be a heavy penalty for not paying child support.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NOS. 283 AND 284:
Rep. Rapp-Svrcek asked Judge Holter if there are agreements

with other states as to jurisdiction or boundaries in these cases. Judge Holter stated "yes".

Rep. Rapp-Svrcek asked Rep. Darko about page 3, line 14, if there was a grey area there. Rep. Darko stated that on a case by case basis, the judges handle this but this could be modified.

Rep. Eudaily questioned Judge Holter in regard to the penalty being so severe for a first offense and he answered that there are laws governing this and other states will not look at extradition for a misdemeanor.

Rep. Darko closed the hearing by stating that these bills give the opportunity for fairness to work. The hearing on HB 283 and 284 were closed.

HOUSE BILL NO. 472: Rep. Darko, sponsor, District 2, explained that this act establishes a system of court commissioners to act as mediators in proceedings for marriage dissolution and legal separation, providing for mediator qualifications, selection, and salary. This also provides for a procedure for mediation, allowing private mediation as the alternative to mandatory mediation required in a district court proceeding for dissolution or legal separation. She explained that limitations on mediation proceedings are: held in private, held without a verbatim record, and are confidential.

JOHN MCCREA, Child Support Council Division, proposes a system to resolve domestic issues through the process of mediation. Mediation results in 74% less court trials. Montana can only benefit from HB 472.

R. HOLTER, JUDGE, Child Support Advisory Council, stated that this is a very important field. The people here today testifying are talking about frustration with the present system. This bill is an attempt to solve problems and take away the need to fight. He pointed out that this is not a lawyers or judges relief act.

BOB SILVERNALE, United Fathers of America, stated that the system does not work but mediation does work. Divorce should be the last resort.

BILL RILEY, Licensed Social Worker and a Private Mediator, supported this legislation. He stated that the system of mediation is the how to of having the child raised by both of the parents when they are divorced. There are a few weaknesses in the bill and he addressed the fiscal issue in that instead of being a government run system, it can be given to the private sector and having only one mediator in

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan. 30, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)		✓	
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		✓	
EARL LORY (R)	✓		

WITNESS STATEMENT

DATE

1-30-87

HB #

283.4 284

NAME

Wayne G. Peterson

BILL NO.

284

ADDRESS

2005 Lester St., Missoula, MT. 59801

DATE

1-30-87

WHOM DO YOU REPRESENT?

Myself and my sons, especially my sons.

SUPPORT

✓

OPPOSE

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Unfortunately, American society assumes that non-custodial parents, especially fathers do not love their children. As a father I grieve daily the loss of my sons. I miss them too much if that is possible.

Current propaganda emphasizes quality time. It states that it is more important to have one hour of quality time than ten hours of regular time. My counter statement to this is that quality time is not possible when you don't get time at all.

I am a sensitive, non-gregarious person whose family was my life line. The loss of my family was completely devastating.

The divorce demand made by ex spouse was a complete surprise. She did not communicate any dissatisfaction.

Since the divorce she has refused to discuss anything with me! She has refused to meet with me to mediate our incomplete financial and property settlement.

She continually models total rejection toward me to my sons.

The reason that I open with these statements is because any controversy with my ex-spouse DOES effect my relationships with my boys especially when my ex-spouse places my sons in the middle constantly.

First of all, as stated in the following previous statement, she refuses to discuss visitation schedule and arrangements with me. This forces the boys to enter the "game" as her substitutes. This fact alone creates visitation interference problems for me.

It is no surprise, then, to tell you that she finds several tactics to interfere with my visitation rights.

I'm sure that anyone who reads this can easily recognize the fact that the custodial parent can be very ~~very~~ resourceful in finding ways to interfere.

Children have the right to receive benefits of both their natural parents. Both parents ^{the} have the right to receive the benefits of their children.

I do not wish ~~to interfere~~ to interfere with my ex-spouse and I have not ~~not~~ interfered with her. I have voluntarily helped her and offered help.

~~The more I cooperate with her, the more she threatened~~

The more I cooperate with my ex-spouse and sons, the more my ex-spouse becomes threatened, insecure, and guilt-filled. Therefore, she creates another problem for me AND THEM.

My primary interest has been centered around the welfare of my sons, Brian and Kevin. I can document many occasions when I have gone out of my way to help them.

Thank goodness, Linda has felt pressure from my work with the boys and she now is slowly starting to do a little bit for them. Good!

My ex-spouse continually places her problems on her sons and my sons.

Believe me, please. A custodial parent can continue a situation and a reason for refusing visitation rights. My ex-spouse has an active imagination.

Problems created for me by my ex-spouse which involve both sons.

She has refused to settle property, cash, and debts with me in full. She has refused to meet with a mediator.

She makes all letters from me to her available to the boys. She ignores letters which provoke me to send more letters.

She has refused to discuss visitation schedule and arrangements with me.

She daily involves the boys in her personal disputes with me. The boys are afraid of me.

She has encouraged them to argue with me in her behalf. She tells them not to see me if I object to her behavior.

She cleverly convinces telephone calls to me so that the boys hear a misrepresented telephone call.

She leaves the boys alone all night on frequent occasions.

She discourages telephone calls and letters to me from the boys. She neglected to inform me of changes in parent-teacher conferences.

She kept the boys away from the telephone for 48 hrs. on three different occasions.

She refuses to give me medical reports. I pay for one-half of the ^{medical} expenses.

Visitations

She drops the boys off a block away from my apartment.

I must deliver them to the Southgate Mall; she is seldom present.

She fails to send money and information for the shopping that the boys are to do.

She never gives me a telephone number or a location where she may be reached in case of emergency; the boys have reached her by calling several numbers.

She failed to deliver Kevin to me on April 12, 1985.

She failed to deliver Kevin to me on time on Oct. 25, 1985.

She directly interfered with a July, 1985 trip to Yellowstone. Brian was not able to go on a later trip. Kevin and I spent five days on the trip.

She continually scheduled doctor appointments on visitation days after I was told that each day was clear.

She failed to provide Brian with transportation money on an activity trip to Missoula. He asked me for bus fare.

She made an abusive telephone call from her work place to me; I was too upset to see the boys that day.

She has called the boys while they visited me to give them false road reports.

She has telephoned the boys to tell them that she would pick them up before the scheduled visitation had ended.

She interfered with my Christmas gift to the boys this year.

She never checks to see if the boys bring homework, retainers, money, musical instruments, etc. when they visit me.

She refused my visitation request on Christmas Day, 1985.

She had a family that includes Kevin in their activities send an unauthorized bill to me.

She now has told the boys that I can not come into her home to visit with them. I was able to do that the first year.

She continually places the boys in the middle of her dispute with me. There is always tension during visits with them.

She has created a situation in which the boys lie to me about their activities so I won't know what she does. I don't care what she does but I do care about what the boys do.

She yelled at me during a telephone call, "You are buying the boys with your gifts!" The boys were in the same room at the time.

She yelled at me during a telephone conversation, "I want to punish you!" The boys were in the same room at the time.

She refused to give me all my personal financial records necessary to complete my income tax. She finally gave them to my account. My relationship with her and lack of it does affect my relationship with my sons.

When I break down in tears during a visit or during the telephone conversation. She tells the boys that I am upsetting them and that I should control myself more.

This past two and one-half years, I have been able to visit the boys less than one day a month; one ten days total the first year.

The boys lie to me about their activities due to their mother's ^{desire to avoid} me + hide her activities.

Wayne G. Peterson

2005 Leeterville, Missouri, MO

543-5613

59801

My two sons deserve a much better life than the life that they now live. I do all I can to cooperate with the boys and also with their mother. However, my positive action is very much watered down due to my ex-spouse's negative response.

VISITORS' REGISTER

COMMITTEE

BILL NO.

HB 284

DATE

Sept. 30, 1987

SPONSOR

472

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Dorothy Hargold	Ft. Shaw	yes	
KAYE HOLMESLAND	#4 - SHAW	✓	
Wesley G. Peterson	2005 Lester St. Missoula, MT	yes	
Bill Hargold	Child Support Court	✓	
John McRae	CHILD SUPPORT ADVISORY COUNCIL	✓	
R. H. H. H.	" " " "		
Sandy Crane	Women's Lobbyist Fund		
DAVID ELLER	Lee County		
Kate Kogstad	Geraldine, MT		
Jan Leiten	Townsend, MT	✓	
Phyllis P. Haward	Kalispell, MT		
Ed Garraher	Kalispell		
Erl Kennedy	Kalispell		
Clark Hargold	Kalispell		
Lee Hargold	Helena	✓	
Bob LEERVAIS	Browning		
W. H. H.	Browning	?	
James O'Neil	Kalispell		
Richard G. Hargold	Helena	✓	
W. H. H.	Kalispell	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

This forms the dividing line between a misdemeanor and a felony. He submitted a written letter from Mr. James C. Bartlett, Attorney from Kalispell, which stated that the justification for the bill, in his opinion, is the economic reality that every 12 years the price of goods doubles. The criminal code was passed in 1973. Fourteen years have passed and therefore, \$800.00 is equivalent to the \$300.00 figure in terms of price of goods. Therefore, it is appropriate to raise the value. (Exhibit A).

There were no proponents, opponents and no questions from the committee.

Rep. Cohen closed the hearing.

HOUSE BILL NO. 301: Rep. Rapp-Svrcek, District No. 51, sponsor, stated that this bill plugs a hole in the criminal law by creating the offenses of criminal and negligent endangerment. These offenses would apply primarily to cases in which someone would introduce poison into aspirin tablets or something of that nature. He pointed out that a person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. He stated that the fiscal note attached is in error.

PROPOSERS: MARK J. MURPHY, Attorney General's Office, representing the Montana County Attorney's Association, stated that this bill addresses gross negligence. He urged support for the legislation.

MIKE MCGRATH, Lewis and Clark County Attorney, strongly supported the bill.

There were no further proponents, no opponents and no questions from the committee. Rep. Rapp-Svrcek closed the hearing on House Bill No. 301.

HOUSE BILL NO. 419: Rep. Spaeth, sponsor, requested that Rep. Mercer speak for him in asking the committee to let the bill sit in committee. There was no action taken on this bill as of this date.

EXECUTIVE SESSION:

ACTION OF HOUSE BILL NO. 283: Rep. Darko moved, DO PASS. Rep. Bulger moved to amend by deleting lines 14 and 15 on page 3.

Rep. Addy stated that this section is setting the grounds for modifying the custody decree and it sounds like good grounds for modifying the decree. Rep. Bulger did not agree

because it is frequently an area of conflict and it is a subject of vague interpretation and will cause trouble. Rep. Hannah stated that parents might look at this language and be more sensitive to the children, so, he opposed the motion. Rep. Darko pointed out that the bottomline of the bill is to protect the children, and the language is harmful. Rep. Miles felt that this could be abused too easily. Rep. Mercer stated that modification proceedings have seen some desire in the legal system to try to resolve issues of custody and visitation so that people are not constantly in court and the current standard is someone has to show the serious harm which is a very difficult standard to meet. Once custody has been determined, it is almost all over with and this bill will really open this up, if there is some frustration the case can be opened up. He suggested that the provision be dropped.

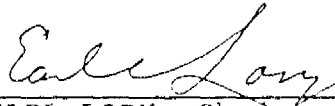
Rep. Brown supported the motion and stated the language heard most by parents going through custody suits is found in subsection (e), and this bill does try to get to a remedy that is essential. Rep. Daily made a substitutive motion to strike line 11-20, on page 3. Question was called and a voice vote was taken. The motion FAILED 13-4. Question was called and a voice vote was taken. The motion CARRIED 9-8. Discussion continued and Rep. Rapp-Svrcek stated that he felt this was a good bill. Rep. Mercer explained that the problem most seen in regard to this bill is that it will essentially become a man's relief act. If he is bitter over the custody, he will be able to contest custody and the more litigation that takes place, the more bitterness that will follow. There needs to be one custody battle and then it is over with. Rep. Brown pointed out that people in this situation know the statute and what they can get away with. Subsection 2, seems to be a hammer and he felt it was a good hammer. Rep. Miles pointed out that there is no time limit on page 2 in regards to giving notice, she preferred a clearer directive so that it is not abused. Rep. Mercer stated that there is a rule of civil procedure in regard to serving notice of divorce but Rep. Miles' concern is appropriate because there is not a time limitation currently for custody cases. Rep. Darko stated that there are two sides to these situations and there are some amiable divorces. Rep. Rapp-Svrcek acknowledged that there should be a time limitation set up. Rep. Mercer proposed an amendment that if someone is attempting to leave the state, they must give written notice to be sent to the noncustodial parent at the last known address and provided to the clerk of the court. Rep. Hannah stated that there are too many problems to address in this bill and every loop hole simply cannot be closed. It is important to try and maintain contact, visitation rights and anything that helps force more agreeable divorces is a good idea. Rep.

Rapp-Svrcek agreed with Rep. Mercer's proposed amendment and stated that it will make a good bill better. Rep. Addy opposed the proposed amendment. Rep. Mercer moved his amendment. Question was called and a voice vote was taken. The motion CARRIED 15-2, with Rep. Addy and Eudaily dissenting. (See Amendments attached).

Rep. Darko moved that HB 283 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED 15-2, with Rep. Bulger and Miles dissenting. HB 283, DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 284: Rep. Darko moved DO PASS. Rep. Mercer stated that he has a serious concern about this bill. He felt that it will take marital disputes out of the hands of the party and that prosecutors will get caught up in the middle of it, so, that there is a civil proceeding going on and a criminal proceeding at the same time. To make it a crime to interfere with visitation rights is serious. Rep. Darko stated that the only thing custodial parents can be charged with is contempt of court and she did not know how it can be fixed. Rep. Meyers made a substitutive motion to table the bill. A voice vote was taken and the motion CARRIED 16-1, with Rep. Darko dissenting. HB 284, TABLED.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 11:25 a.m.



EARL LORY, Chairman

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 5, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

February 5

19 87

JUDICIARY

Mr. Speaker: We, the committee on
report HOUSE BILL NO. 283

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Chairman

1. Page 2, line 9.

Following: "state, a"

Insert: "resident"

2. Page 2, line 10.

Strike: "may"

Insert: "shall"

3. Page 2, line 11.

Strike: "before"

Insert: "unless"

4. Page 2, line 12.

Strike: "has" through "for" on line 12

Insert: "upon order of the court
after notice to the noncustodial
parent and a"

5. Page 3, line 13.

Following: "parent:"

Insert: "or"

Strike: lines 14 and 15

Renumber: Subsequent subsection

FIRST

WHITE

reading copy ()
color